



2015-053

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Nepotism – Gas Districts – Public
Corporations – Cullman County

The Cullman-Jefferson Counties Gas District (“District”) may employ the daughter of the current chief executive officer of the District without violating section 41-1-5 of the Code of Alabama.

Dear Mr. St. John:

This opinion of the Attorney General is issued in response to your request on behalf of the Cullman-Jefferson Counties Gas District.

QUESTION

May Cullman-Jefferson Counties Gas District employ the daughter of the current chief executive officer (“CEO”) of the District without violating section 41-1-5 of the Code of Alabama?

FACTS AND ANALYSIS

According to your request, the District is incorporated as a public corporation pursuant to sections 11-50-390 through 11-50-417 of the Code. The District is considering a proposal to hire the daughter of the CEO of the District. If hired, the daughter would be directly supervised by her father.

Section 41-1-5 of the Code prohibits nepotism in state service and states, in pertinent part, as follows:

(a) No officer or employee of the state or of any state department, board, bureau, committee, commission, institution, corporation, authority or other agency of the state shall appoint, or enter a personal service contract with, any person related to him within the fourth degree of affinity or consanguinity to any job, position or office of profit with the state or with any of its agencies.

ALA. CODE § 41-1-5 (2013).

Generally, the state nepotism statute does not apply to local officials. Opinion to Honorable Albert Hall, Member, House of Representatives, dated February 26, 1993, A.G. No. 93-00142; opinion to Honorable Jackie O. Isom, dated May 3, 1990, A.G. No. 90-00263; but see opinion to Honorable Matt G. Sharp, Chairman, DeKalb County Board of Education, dated April 22, 2015, A.G. No. 2015-041 (section 41-1-5 is applicable to employees of county boards of education) and opinion to Honorable Bill Fuller, Member, House of Representatives, dated March 5, 1996, A.G. No. 96-00146, *quoting extensively from Opinion of the Justices* No. 212, 291 Ala. 581, 285 So. 2d 87 (1973) (because county boards of education execute a state function, namely education, and are funded by state funds, they are subject to section 41-1-5).

Further, this Office has specifically determined that section 41-1-5 of the Code does not apply to local public corporations. See opinion to Honorable Clarence F. Rhea, City Attorney, dated May 26, 2004, A.G. No. 2004-149 (determining that a local water authority, a public corporation, was not subject to section 41-1-5.) The District is a public corporation incorporated pursuant to sections 11-50-390 through 11-50-417 of the Code. Its function is to provide natural gas to portions of Jefferson, Cullman, and Morgan Counties. It is funded primarily from customer billing for services. Accordingly, section 41-1-5 of the Code does not apply to the District, a local public corporation.

The facts submitted in your request may also implicate provisions of the Alabama Ethics Law. This Office does not opine on questions

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related to the Ethics Law. Accordingly, you should also direct your question to the Alabama Ethics Commission for guidance.


CONCLUSION

The Cullman-Jefferson Counties Gas District may employ the daughter of the current chief executive officer of the District without violating section 41-1-5 of the Code.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE
Attorney General
By:

A handwritten signature in black ink that reads "Brenda F. Smith". The signature is written in a cursive, flowing style.

BRENDA F. SMITH
Chief, Opinions Division

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